

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN B. ROBBINS, JUDGE

DIVISION I

CA 05-1204

TRACY RIDDICK and THOMAS
CHRISTOPHER BLACKWELL

APPELLANTS

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES

APPELLEE

OCTOBER 25, 2006

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
TENTH DIVISION, [NO. JN2004-1292]

HONORABLE JOYCE WILLIAMS
WARREN, JUDGE

AFFIRMED

Appellant Tracy Riddick appeals from an order granting permanent custody of her son, Seth, to the child's paternal grandmother, Joye Blackwell. Ms. Riddick argues that the trial court based its decision on the clearly erroneous finding that she failed to comply with the previous orders of the court. We affirm.

The permanent custody order was entered pursuant to Ark. Code Ann. § 9-27-334(a)(3) (Supp. 2005), which provides:

(a) If a juvenile is found to be dependent-neglected, the circuit court may enter an order making any of the following dispositions:

. . . .

(3) If it is in the best interest of the juvenile, grant permanent custody to an individual upon proof that the parent or guardian from whom the juvenile has been removed has not complied with the orders of the court or upon proof that no

reunification services should be required to reunite the juvenile with his or her parent or parents and that no further services or periodic reviews are required[.]

The burden of proof in dependency-neglect proceedings is by a preponderance of the evidence. Ark. Code Ann. § 9-27-325(h)(2)(B) (Supp. 2005). On appeal, we will not reverse the trial court's findings unless they are clearly erroneous, giving due regard to the trial court's opportunity to judge credibility of the witnesses. *Arkansas Dep't of Human Servs. v. McDonald*, 80 Ark. App. 104, 91 S.W.3d 536 (2002). A finding is clearly erroneous when, although there is evidence to support the finding, after reviewing all the evidence we are left with a definite and firm conviction that a mistake has been made. *Id.*

This case began when appellee Arkansas Department of Human Services (DHS) exercised an emergency hold of the child on July 1, 2004. On the following day, DHS filed a petition for emergency custody, alleging that Seth was dependent-neglected and that his removal from Ms. Riddick's care was necessary to protect his health and safety. Attached to the petition was the affidavit of a DHS worker, wherein it was asserted that Seth, d/o/b 4-12-02, had been born premature and suffers from multiple serious disorders including a diffused brain injury and cerebral palsy, and that he must be fed through a tube. The affidavit further averred that the child had been admitted to Arkansas Children's Hospital in a malnourished condition and had not gained weight in more than a year. The trial court granted DHS's petition for emergency custody on the day it was filed.

At a probable cause hearing held July 8, 2004, DHS worker Carolyn Ford testified that Seth had been sick and that Ms. Riddick brought him to the hospital on June 4, 2004,

when he was admitted. Ms. Ford stated that during an interview with Ms. Riddick on June 10, 2004, Ms. Riddick admitted to current and past use of marijuana and methamphetamine. According to Ms. Ford, Ms. Riddick even admitted that she used drugs in Seth's hospital room. Ms. Riddick told Ms. Ford that she suffered from depression and was stressed, and she agreed to undergo drug treatment to keep her child. At the conclusion of the hearing, the trial court entered an order finding probable cause of dependency-neglect, and continued the child in DHS custody while ordering a home study on the home of Ms. Blackwell for possible placement. The trial court permitted visitation at the hospital for Ms. Riddick, Ms. Blackwell, and the child's father, Thomas Blackwell.

On August 12, 2004, Ms. Riddick filed a motion for change of custody, asserting that Seth was ready for discharge from the hospital and that temporary custody should be placed with Ms. Blackwell at her home, where her son Thomas Blackwell also lived. The trial court entered an agreed order on August 16, 2004, placing temporary custody with Ms. Blackwell and the child's father, and allowing Ms. Riddick supervised visitation at Ms. Blackwell's home. The order further required both parents and the paternal grandmother to complete training offered by the hospital staff related to the special needs of the child.

An adjudication hearing was held on August 26, 2004, wherein Ms. Riddick stipulated to dependency-neglect and the announced case plan was reunification with the mother. At the hearing DHS worker Lorraine Smith testified that Ms. Riddick had twice tested positive for marijuana. Ms. Blackwell testified that she and her son had completed

the hospital training, and that Seth was living in her home. Ms. Blackwell asserted that Seth was gaining weight and doing great. Ms. Riddick testified that she was unemployed and living with her boyfriend at his house. She asserted that her boyfriend was employed and paid the bills. On the same day as the hearing the trial court entered an order finding the child dependent-neglected. The order continued temporary custody with the paternal grandmother and ordered DHS to provide services to Ms. Riddick, including drug screens, drug treatment, a psychological assessment, and supervised visitation at Ms. Blackwell's home.

A review hearing was held on December 10, 2004. At the hearing, DHS worker Elizabeth Shack testified that Seth was doing very well and was gaining weight in his grandmother's custody. Ms. Shack testified that Seth receives therapy at North Hills School. Ms. Shack further testified that Ms. Riddick had completed an inpatient drug-treatment program and that her drug screens had been negative.

Ms. Riddick testified that she still lived with her boyfriend and had started working part-time at Martin Pools. Ms. Riddick stated that she had only been able to visit with Seth once since the previous hearing, but maintained that she had attempted visitation numerous times but was not receiving adequate assistance from DHS.

Ms. Blackwell testified that since being placed in her home from the hospital, Seth had gained five pounds and was "doing fabulous." She stated that she transported Seth to and from school and that, "I'm almost like a permanent fixture at Seth's school."

At the conclusion of the December 10, 2004, review hearing, the trial court entered an order finding that DHS had failed to provide appropriate services. As a result, the trial court noted that Ms. Riddick would be given some additional time toward reunification. The review order outlined a case plan that included drug screens and treatment, attending appointments and meetings regarding Seth's progress at North Hills School, continued supervised visitation at Ms. Blackwell's home, and locating appropriate housing.

A subsequent review hearing was held on February 25, 2005. DHS worker Linda Rochelle testified that Seth was doing well, and that there were no concerns with Ms. Blackwell but there were concerns about Ms. Riddick. She stated that while Ms. Riddick had completed three parenting sessions, she had not completed Narcotics Anonymous meetings and had reported that she was not sure whether she was drug free. Ms. Rochelle stated that on one occasion Ms. Riddick presented for a drug screening but dropped and spilled her urine sample, and Ms. Rochelle indicated she thought this was done purposely. Ms. Rochelle asked her to return later that day for another test, but Ms. Riddick failed to show up. Ms. Rochelle stated that Ms. Riddick tried to demand drug screens only on certain days, but that they were not given because she thought Ms. Riddick was trying to manipulate the screenings as opposed to being randomly tested.

Ms. Riddick acknowledged a positive drug screen for marijuana on January 25, 2005, but stated, "I have no idea why I had a positive drug screen," maintaining that she had not used any drugs since July 8, 2004. Ms. Riddick testified that she was not engaged to her

boyfriend and planned on continuing to live with him. She acknowledged at the hearing that she met him when they were both doing methamphetamine, but asserted that he had been off of drugs for more than a year without the benefit of any treatment program.

At the conclusion of the February 5, 2005, hearing, the trial court expressed concern about Ms. Riddick's continued drug use and lack of a stable and appropriate home. The trial court noted minimal progress toward completing the court orders and requirements of the case plan, and directed the prior orders of the court to remain in effect.

The final hearing in this case occurred on June 30, 2005. At the outset of the hearing DHS, the father, and the child's attorney ad litem all recommended permanent placement with the grandmother. DHS worker Earnest Tate testified that since the last hearing Ms. Riddick once tested positive for drugs and twice failed to show for her scheduled screenings. Mr. Tate further stated that, while Ms. Riddick completed parenting classes, she failed to visit Seth at North Hills as ordered, and attended therapy only sparingly. Mr. Tate could not say that Ms. Riddick had made significant measurable progress toward reunification, and indicated that Seth continued to thrive with no health concerns in the custody of Ms. Blackwell.

Ms. Blackwell testified that Seth was doing great in her home, and that his mother had not visited or called to check on him in about a month and a half. Ms. Blackwell stated that Ms. Riddick did not even attend her son's birthday party, despite being invited. Ms. Blackwell expressed a deep concern that Ms. Riddick was using illegal drugs based on

the lack of concern for her child. Ms. Blackwell stated that Seth's father is engaged to be married and no longer lives with her.

Ms. Riddick testified on her own behalf, and stated that she has had trouble complying with all of the trial court's orders and the case plan due to scheduling conflicts with her recent employment. In this regard, she stated that she works the night shift at Kroger. She explained that the positive drug screen was probably the result of cough syrup she was taking, and that she missed two of the screenings because DHS left the notifications in her mailbox and she failed to get them in time. Ms. Riddick acknowledged missing her Narcotics Anonymous meetings, but explained that she has panic attacks when she is close to strangers. As for not visiting her son recently, Ms. Riddick explained that it was suspected that she had lice, and she could not afford to have it checked to clear her for visitation. Ms. Riddick requested that the trial court give her more time toward reunification, and stated that her house could be ready for a home study in one week.

The trial court entered the order now on appeal on June 30, 2005. The trial court found that Ms. Riddick had failed to comply with its orders, and also that no further services are required. In this regard, the order recites that Ms. Riddick shall not have additional time toward reunification because it would not make any difference given the history of the case. The order states, "There is not that much time in the world." Finding it to be in the child's best interest, the trial court awarded permanent custody to the paternal grandmother.

However, the order did not terminate Ms. Riddick's parental rights, and it awarded her continuing visitation.

Ms. Riddick appeals from the permanent custody order, arguing that the trial court erred in finding that she failed to comply with the previous orders as contemplated by Ark. Code Ann. § 9-27-334(a)(3) (Supp. 2005). She contends that she substantially complied with the case plan, and that most of her shortcomings were either due to reasonable excuse or lack of support from DHS. Ms. Riddick notes that the trial court previously indicated that DHS was not providing adequate services and stated that as a result she would be given additional time toward reunification. Ms. Riddick asserts that she had made significant progress including the completion of rehabilitation and parenting classes, and maintaining a job.

We hold that the trial court's finding that Ms. Riddick failed to comply with the court's orders was not clearly erroneous. There was evidence that Ms. Riddick failed to attend therapy and Narcotics Anonymous meetings, and failed to attend appointments as ordered at North Hills School. She failed to attend scheduled visitation with Seth and had not even checked on him for a month and a half prior to the final hearing. Ms. Riddick had multiple positive drug tests and missed other scheduled screenings. And she failed to find stable housing as directed by the court, given her continued cohabitation at the home of her boyfriend whom she met through mutual methamphetamine use. While Ms. Riddick provided various excuses for failing to comply with the terms of the case plan, it was for the

trial court to assess her credibility, and it evidently did not find her excuses credible. Despite being given a year to work toward reunification, there was evidence that Ms. Riddick's progress toward the directives of the case plan was minimal at best. The trial court committed no error in basing its permanent custody decision on Ms. Riddick's sustained failure to comply with a multitude of the court's orders.

We note that Ms. Riddick does not challenge the trial court's finding that it is in Seth's best interest to be in the permanent custody of his grandmother. Nor does Ms. Riddick specifically dispute the alternate basis of the trial court's decision under Ark. Code Ann. § 9-27-334(a)(3) (Supp. 2005) that no reunification services are required. Nonetheless, Ark. Code Ann. § 9-27-303(46)(c)(i) (Supp. 2005) provides:

(C) Reasonable efforts to reunite a child with his or her parent or parents shall not be required in all cases. Specifically, reunification shall not be required if a court of competent jurisdiction, including the juvenile division of circuit court, has determined by clear and convincing evidence that the parent has:

(i) Subjected the child to aggravated circumstances [.]

"Aggravated circumstances" include a determination by a judge that there is little likelihood that services to the family will result in successful reunification. Ark. Code Ann. § 9-27-303(6)(A) (Supp. 2005). Moreover, the burden is on the parent to demonstrate genuine, sustainable investment in completing the requirement of the case plan and following the orders of the court in order to retain reunification as the permanency goal. Ark. Code Ann. § 9-27-338(c)(5)(D) (Supp. 2005). In the present case the trial court found that further

reunification services would be futile, and in light of the evidence this finding was not clearly erroneous.

We affirm the trial court's order placing permanent custody of the child with his paternal grandmother. The appellant requests in the alternative that this case be remanded with instructions to reopen the case and continue the trial court's jurisdiction, and we note that the trial court does retain jurisdiction of this case should a change in circumstances arise.

Affirmed.

GLADWIN and BAKER, JJ., agree.